IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5903 of 1990

with

SPECIAL CIVIL APPLICATION No 5892 of 1990,
5902/90, 5901/90 and 5900/90,

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.BUCH

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

MUKUND JAYANTIBHAI PATEL

Versus

DAHYABHAI RAIJIBHAI PATEL

Appearance:

MR DF AMIN for Petitioners

SERVED BY AFFIX.-(R) for Respondent No. 1

MR BY MANKAD, AGP for Respondent No. 2

CORAM : MR.JUSTICE C.K.BUCH

Date of decision: 01/09/2000

ORAL COMMON JUDGEMENT

1. In this group of petitions under Article 227 of the Constitution of India, the petitioners have challenged the legality, validity and propriety of the orders produced at Annexures A, B, C and D to each petitions. All the petitions raise similar contentions and points agitated therein are also identical and, therefore, all these petitions are consolidated, heard together and are disposed of by this common judgment.

2. No affidavit-in-reply is filed on behalf of the respondents. Learned AGP Mr. Mankad appearing for the respondent State submits that the case of the respondents rests on legal issues agitated by the petitioners and, therefore, there was no need to file formal reply by the respondents. Order at Annex.A is passed by Mamlatdar, Vaghodia while dealing with the notice issued to the petitioners under sec.84(c) of the Bombay Tenancy & Agricultural Lands Act, 1948 (hereinafter referred to as the "Act"). The petitioners purchased various lands situated in the sim of village Rawal of Taluka Vaghodia by five different registered sale-deeds from the agriculturists of village Rawal in the year 1982. All the five documents were executed and registered on 28.5.1992 and at the request of the present petitioners, mutation entries were made in village form nos. 6 & 8A on the strength of the registered sale-deeds executed in favour of the petitioners. Mamlatdar, Vaghodia found that sale transactions in favour of the present petitioners by the agriculturists of village Rawal was violative of certain provisions of the Act and, therefore, notice under sec.84(c) of the Act was served to the petitioner on 16.5.1983. Vide order dated 8.11.1983 (Annex.A), Mamlatdar, Vaghodia held that the alleged transfer in favour of the petitioners being illegal and contrary to the provisions of sec.2(6) of the Act, the same is illegal and ineffective and names of the petitioners entered into village form Nos. 6 & 8A on the strength of such documents of transfer, should be deleted.

3. Feeling aggrieved by the order of the Mamlatdar, Vaghodia, the petitioners moved appellate authority namely Deputy Collector, Dabhoi, who vide his order dated 5.11.1984 (Annex.B), dismissed the appeal. Thereafter, the petitioners took the matter before the revisional authority and revision applications were filed before the Gujarat Revenue Tribunal. Tribunal, after hearing the parties, dismissed the Revision Applications vide order dated 25.8.1989 (Annex.C). The petitioners again moved Gujarat Revenue Tribunal by moving Review Applications,

but vide order dated 16.3.1990 (Annex.D), Gujarat Revenue Tribunal dismissed Review Applications. The petitioners, being aggrieved by the aforesaid orders, preferred these petitions challenging the same by invoking jurisdiction of this Court under Article 227 of the Constitution of India and have submitted that all the authorities have not considered the basic and important aspect of the matter that the petitioners were basically agriculturists. Father of the petitioners was holding agricultural lands in that very village.

4. Mr. Amin, appearing for the petitioners has pointed out that practically after a period of four years, Mamlatdar & ALT, Vaghodia accepted the correct factual position and while dealing with Tenancy Case No. 1393/89, held that the petitioners were agriculturists and were cultivating agricultural lands of that very village Rawal of Taluka Vaghodia and, therefore, notice issued under sec.84(c) of the Act requires to be dropped. It is pertinent to note that the very issue was concluded legally and logically earlier in the year 1990 and there was no reason to decide the very issue again by the revenue authority. It is rightly submitted by learned counsel Mr. Amin that revenue authorities have tried to rectify the mistake committed earlier and the tenancy proceedings initiated against the petitioners were terminated. Zerox copy of the certified copy of the order passed by the Mamlatdar & ALT, Vaghodia in Tenancy Case No. 1393/89 dated 27.1.1994 is tendered today during the course of hearing and the same is taken on record of Spl.C.A. No. 5903/90. Mr. Amin has submitted that looking to these facts, the matter should be remanded to the first revenue authority to examine the case of the petitioners de novo and the orders under challenge should be quashed and set aside. Mr. Amin has raised one another contention that in light of the decision Apex Court in the case of Mahommad Kavi Mahommad Amin v/s Fatamabai Ibrahim, reported in (1997)6 SCC P.91, this Court should hold that issuance of notice by Mamlatdar for the first time in the month of May 1983 was beyond reasonable time and the same ought to have been withdrawn by the authority. This point could have been agitated by the present petitioners before the appellate authority or revisional authority, but looking to the settled legal position, it is the obligatory duty of the authorities exercising judicial powers to consider point of limitation suo motu. Hence, without going into the merits, these authorities can be directed to examine point of limitation also when case of the petitioners is examined by them.

5. Mr. Amin has further submitted that in light of

the changed policy of the Government of Gujarat and the amendment made in the relevant provisions of the Act i.e. sub-sec.(6) of sec.2 of the Act, the petitioners should be given an opportunity to represent their case before the revenue authorities or before the State of Gujarat. So, on all counts, if the petitions are allowed and matters are remanded back to the authority, the ultimate interest of justice would be met. Mr. Amin has rightly submitted that the petitioners should be given one more opportunity to apply for regularisation of the lands purchased by them under various documents as the competent authority namely Collector or State of Gujarat has jurisdiction to grant such permission retrospectively in view of the provisions of sec.63 of the Act.

6. Learned AGP Mr. Mankad appearing for the respondent State, during the course of submissions, has stated that amendment in the Act vide Amending Act No.IV of 1995 is not retrospective. According to Mr.Mankad, whether said amended provisions are having retrospective effect or not is the question which is pending before this Court. So, this point should be left open for the revenue authorities if the matters are remanded for consideration de novo.

7. After going through the order dated 27.1.1994 produced today and the orders passed by the appellate authority while dealing with RTS Appeal No. 24/95-96 dated 30.7.1996, in my view, matters require to be remanded back to the revenue authority by quashing and setting aside the orders under challenge. It seems that first order passed by Mamlatdar & ALT, Vaghodia after a lapse of more than one year, has resulted into miscarriage of justice because the father of the petitioners was holding agricultural lands in the sim of very village Rawal at the relevant point of time. I agree that no formal procedural error is committed by the authority, but to prevent miscarriage of justice and with a view to see that the substantive justice is done to the parties, in my view, this is a fit case where this Court should exercise jurisdiction under Article 227 of the Constitution of India and the submissions advanced by learned counsel Mr. Amin, therefore, require to be accepted.

8. For the reasons aforesaid, all these petitions are hereby allowed. Impugned orders at Annex.A, B, C, and D in each petition are hereby quashed and set aside and all the five matters are remanded back to the revenue authority namely Mamlatdar & ALT, Vaghodia for considering the case of the petitioner of each petition

afresh and de novo in light of the facts available on record and evidence, if any, led by the petitioners. Petitioners will be at liberty to apply before the Collector and/or State of Gujarat for getting formal permission for regularising sale-deeds executed in favour of the petitioners in respect of the lands situated in the sim of village Rawal of Vaghodia Taluka, irrespective of their right to plead their case before the authority to whom matters are remanded back. In view of the facts and circumstances of the case, revenue authority viz. Mamlatdar & ALT, Vaghodia is directed to dispose of the case as expeditiously as possible.

Rule is made absolute accordingly in each petition. Interim relief, if any, stands confirmed. No order as to costs.

1.9.2000 [C.K. BUCH, J]
*rawal